Supreme Court, U.S.
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No. 96-1411

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1996

United Companies Lending Corporation,

Petitioner,

v.

Michael D. McGehee, and Joyce McGehee,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITIONER'S REPLY MEMORANDUM

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. THE ALABAMA SUPREME COURT'S DECISION IS BASED ON AN INTERPRETATION OF FEDERAL LAW 1

II. THE ALABAMA SUPREME COURT'S DECISION IS NOT BASED ON INDEPENDENT AND ADEQUATE STATE GROUNDS 2

III. THE MCGEHEES MISCONSTRUE THE RECORD AND UNITED'S PRIOR REPRESENTATIONS 4

IV. CONCLUSION 5

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Auer v. Robbins, 117 S. Ct. 905 (1997)..... 2

Michigan v. Long, 463 U.S. 1032 (1983)..... 3

Pennsylvania v. Labron, 116 S. Ct. 2488 (1996)..... 3

PETITIONER'S REPLY MEMORANDUM

I. THE ALABAMA SUPREME COURT'S DECISION IS BASED ON AN INTERPRETATION OF FEDERAL LAW

The McGehees argue in their Brief in Opposition that the Alabama Supreme Court simply interpreted a state statute according to state rules of construction and that there is no federal question at issue. Brief in Opposition ("Op.") at pp. 6-7. However, on the next page, the McGehees concede that the Alabama Supreme Court interpreted federal law in reaching its decision. Op. p. 8-9. They argue that the Alabama Supreme Court **correctly interpreted** the HUD regulations which implement the National Housing Act and **correctly determined** that United is not an "approved mortgagee" under the National Housing Act. This argument necessarily concedes the existence of federal issues in the case and the existence of this Court's jurisdiction.

The McGehees offer four reasons why the Alabama Supreme Court correctly decided that United is not an "approved National Housing Act mortgagee." Op. pp. 10-11. However, these reasons are irrelevant to the issues raised by the Petition for Certiorari. First, not all of these reasons were even relied on by the Alabama Supreme Court in its opinion. Further, by arguing that the court correctly interpreted HUD regulations, the McGehees necessarily concede that the court did in fact interpret federal law and thus that a federal question exists.

The Alabama Supreme Court relied heavily on its own interpretation of the HUD regulations and held that United is not an approved mortgagee under the National Housing Act. This directly contradicts HUD's determination that United is an approved mortgagee under the National Housing Act. *See* Petition for Certiorari, App. G-3 to G-4. Furthermore, the Alabama Supreme Court failed to give any deference to

HUD's determination.[1] This Court has recently reaffirmed the importance of affording deference to federal agency interpretations of statutes and regulations which they are delegated to implement and enforce. *Auer v. Robbins,* 117 S. Ct. 905, 911 (Feb. 19, 1997) (deference given to the Secretary of Labor's interpretation of agency regulations as set forth in an amicus brief.).

The McGehees' claim, that the Alabama Supreme Court correctly interpreted the HUD regulations, highlights the importance of this case. Their assertions invite this Court to determine the proper level of deference that state courts should give to federal agency interpretations of statutes and agency regulations that have been delegated to those federal agencies and to correct errors when the federal regulations have been improperly interpreted by a state court.

II. THE ALABAMA SUPREME COURT'S DECISION IS NOT BASED ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The McGehees argue that the Alabama Supreme Court's decision is based on three independent and adequate state grounds and that this Court has no jurisdiction to hear the Petition for Certiorari. Op. pp. 3-4. They are wrong.

Although the three asserted state law grounds may be proper tools of state statutory construction, they have no bearing on or application to the proper interpretation of fed-

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[1] The McGehees assert that United "relies very heavily, if not exclusively, upon a 1996 rule change" to demonstrate that the Alabama Supreme Court incorrectly interpreted the HUD regulations. Op. p. 9. This is simply incorrect. United's only reference to the 1996 rule change is in a footnote in which United demonstrates that the Alabama Supreme Court's decision is not based on the rule change and that the decision is incorrect under the HUD regulations in effect both before and after the 1996 rule change.

eral regulations determining whether United is an approved mortgagee under the National Housing Act.

Furthermore, when a state court decision appears to rest primarily on federal law, or to be interwoven with it, this Court will presume that the decision is based on federal law. *See Michigan v. Long*, 463 U.S. 1039, 1041 (1983); *see also Pennsylvania v. Labron*, 116 S. Ct. 2485, 2487 (1996). Assuming each or any of the three state law grounds would be adequate or sufficient to support the court's decision, the Alabama Supreme Court's reliance on the federal issues prevents the asserted state law grounds from being independent as well.

The McGehees concede that the Alabama Supreme Court interpreted federal law in reaching its decision. Thus, any claimed state law grounds are not independent even if they might be adequate. A cursory reading of the court's opinion reveals that its decision is at least interwoven with federal law. The court's decision rests on its determination that "because United's Mobile office is not an approved branch office, ... [HUD] requirements do not apply to any offices it has in Alabama." App. C-10. The Alabama Supreme Court did not decide, as a matter of state law, that Ala. Code § 5-19-31(a) does not apply to United regardless of its status as an approved mortgagee as determined by the provisions of the National Housing Act. The Alabama Supreme Court interpreted federal regulations implementing the National Housing Act and held, as a matter of federal law, that United is not an approved mortgagee under those regulations. App. C-17.

Because the Alabama Supreme Court's decision is interwoven with or relies upon federal law, this Court presumes that it is based on federal law. *Michigan v. Long*, 463 U.S. at 1041. A state court may avoid this presumption if it makes clear by a plain statement that federal law is being used only for guidance, and does not compel the result reached. *Id.* There is no such statement.

Accordingly, this Court has jurisdiction to review the Alabama Supreme Court's interpretation of federal law.

III. THE MCGEHEES MISCONSTRUE THE RECORD AND UNITED'S PRIOR REPRESENTATIONS

The McGehees argue that this case involves only state law issues regarding the proper interpretation of a state statute and that United has previously acknowledged this to be the case. Op. pp. 7-8. This misconstrues the record below.

The statute at issue, Ala. Code § 5-19-31(a), incorporates federal regulations defining the term "approved mortgagee." Until the Alabama Supreme Court's opinion on rehearing, the litigation had proceeded on the assumption that United was an "approved mortgagee under the National Housing Act."[2] Thus the only question was whether the exemption in the statute applied to United, a question involving the proper interpretation of state law.

The Alabama Supreme Court created the federal question on rehearing. There, for the first time, the court held that United is not an "approved mortgagee under the National Housing Act" based on its unexpected interpretation of HUD regulations implementing the National Housing Act. App. C-17. Until this ruling was made, United had argued that the plain language of Ala. Code § 5-19-31(a) applied to it based on the fact that it is a HUD approved mortgagee.

United timely petitioned for rehearing and at its first and only opportunity to do so argued to the Alabama Supreme Court that the opinion on rehearing failed to adequately defer to HUD

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[2] The trial court held that "it is undisputed that [United] is an approved mortgagee under the National Housing Act", App. A-6, but nevertheless interpreted § 5-19-31(a) in such a manner that United was not included within its exemption. App. A-6 to A-8. On appeal, the Alabama Supreme Court upheld the trial court's determination that United was an approved mortgagee under the National Housing Act. App. B-3 to B-6.

regulations and interpretations and incorrectly interpreted HUD regulations. United's failure to address these issues previously, when they were not at issue, cannot be held against it now.

CONCLUSION

For all the reasons set forth in the Petition for Certiorari and for those additional reasons contained in this Reply Memorandum, United requests that a writ of certiorari be granted.

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